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et al.

H.B. No. 866

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the administration to public school students in certain  
3 grades of state-administered assessment instruments.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 39.023, Education Code, is amended by  
6 amending Subsections (a), (a-1), (a-2), (b), (c-1), (c-3), (e),  
7 (l), (m), (n), and (p) and adding Subsections (a-3), (a-4), (a-5),  
8 (a-6), (a-7), (a-8), and (a-9) to read as follows:

9 (a) The agency shall adopt or develop appropriate  
10 criterion-referenced assessment instruments designed to assess  
11 essential knowledge and skills in reading, writing, mathematics,  
12 social studies, and science. Except as provided by Subsection  
13 (a-2), all students, other than students assessed under Subsection  
14 (b) or (l) or exempted under Section 39.027, shall be assessed in:

15 (1) mathematics, [~~annually~~] in grades three and five  
16 [~~through seven~~] without the aid of technology and in grade eight  
17 with the aid of technology on any assessment instrument that  
18 includes algebra;

19 (2) reading, [~~annually~~] in grades three, five, and  
20 [~~through~~] eight;

21 (3) [~~writing, including spelling and grammar, in~~  
22 ~~grades four and seven,~~

23 [~~(4)~~] social studies, in grade eight; and

24 (4) [~~(5)~~] science, in grades five and eight [~~, and~~

1           ~~[(6) any other subject and grade required by federal~~  
2 ~~law].~~

3           (a-1) The agency shall develop assessment instruments  
4 required under Subsections (a), (a-4), (a-5), and (a-6) ~~[Subsection~~  
5 ~~(a)]~~ in a manner that allows, to the extent practicable:

6                 (1) the score a student receives to provide reliable  
7 information relating to a student's satisfactory performance for  
8 each performance standard under Section 39.0241; and

9                 (2) an appropriate range of performances to serve as a  
10 valid indication of growth in student achievement.

11           (a-2) A student is not required to be assessed in a subject  
12 otherwise assessed at the student's grade level under Subsection  
13 (a) if the student:

14                 (1) is enrolled in a course in the subject intended for  
15 students above the student's grade level and will be administered  
16 an assessment instrument adopted or developed under Subsection (a),  
17 (a-4), (a-5), or (a-6) that aligns with the curriculum for the  
18 course in which the student is enrolled; or

19                 (2) is enrolled in a course in the subject for which  
20 the student will receive high school academic credit and will be  
21 administered an end-of-course assessment instrument adopted under  
22 Subsection (c) for the course.

23           (a-3) For each assessment instrument administered under  
24 Subsection (a) or (a-5), the agency shall determine, based on  
25 available information for that assessment instrument, the minimum  
26 satisfactory adjusted scale score. The minimum satisfactory  
27 adjusted scale score is the sum of the scale score that indicates

1 satisfactory performance on that assessment instrument, as  
2 determined by the commissioner under Section 39.0241(a), plus the  
3 minimum number of points that when added to the scale score produces  
4 a score that, within a three percent margin of error, is predictive  
5 that a student achieving that score would achieve satisfactory  
6 performance on an assessment instrument in the same subject  
7 administered to the student during the following school year.

8 (a-4) A student shall be assessed in grade four in a subject  
9 for which an assessment instrument is administered under Subsection  
10 (a) in grade three if, on the final assessment instrument in that  
11 subject administered under Subsection (a) to the student in grade  
12 three during the preceding school year, the student did not achieve  
13 a score equal to or greater than the minimum satisfactory adjusted  
14 scale score for that assessment instrument, as determined under  
15 Subsection (a-3).

16 (a-5) A student shall be assessed in grade six in a subject  
17 for which an assessment instrument is administered under Subsection  
18 (a) in grade five if, on the final assessment instrument in that  
19 subject administered under Subsection (a) to the student in grade  
20 five during the preceding school year, the student did not achieve a  
21 score equal to or greater than the minimum satisfactory adjusted  
22 scale score for that assessment instrument, as determined under  
23 Subsection (a-3).

24 (a-6) A student shall be assessed in grade seven in a  
25 subject for which an assessment instrument was administered under  
26 Subsection (a-5) to the student in grade six if, on the final  
27 assessment instrument in that subject administered to the student

1 in grade six during the preceding school year, the student did not  
2 achieve a score equal to or greater than the minimum satisfactory  
3 adjusted scale score for that assessment instrument, as determined  
4 under Subsection (a-3).

5 (a-7) A student assessed in mathematics under Subsection  
6 (a-4), (a-5), or (a-6) shall be assessed without the aid of  
7 technology.

8 (a-8) A school district or open-enrollment charter school  
9 may, for its own use in determining whether students are performing  
10 at a satisfactory level, administer to a student at the appropriate  
11 grade level, other than a student required to be assessed, an  
12 assessment instrument developed for purposes of Subsection (a-4),  
13 (a-5), or (a-6). At the request of a district or open-enrollment  
14 charter school, the agency shall provide, allow for the  
15 administration of, and score each assessment instrument  
16 administered under this subsection in the same manner and at the  
17 same cost as for assessment instruments required to be administered  
18 under the applicable subsection. The results of an assessment  
19 instrument administered under this subsection may not be included  
20 as an indicator of student achievement under Section 39.053 or any  
21 other provision.

22 (a-9) If there is a conflict between this section and a  
23 federal law or regulation as a result of forgoing under this section  
24 certain administration of assessment instruments to students who  
25 have recently performed successfully on assessment instruments  
26 assessing the same subject, the commissioner shall seek a waiver  
27 from the application of the conflicting federal law or regulation.

1 In seeking a waiver, the commissioner shall submit all relevant  
2 data, including data relating to:

3 (1) the likelihood that a student who achieves a score  
4 on an assessment instrument equal to or greater than the minimum  
5 satisfactory adjusted scale score for that assessment instrument,  
6 as determined under Subsection (a-3), will, in subsequent years,  
7 perform satisfactorily on assessment instruments in the same  
8 subject;

9 (2) the costs associated with ongoing assessment of  
10 students who have proven likely to perform successfully on  
11 subsequent assessment instruments; and

12 (3) the benefit of redirecting resources from  
13 assessment of students who have proven likely to perform  
14 successfully on subsequent assessment instruments toward enabling  
15 lower performing students to perform successfully on assessment  
16 instruments after one school year.

17 (b) The agency shall develop or adopt appropriate  
18 criterion-referenced alternative assessment instruments to be  
19 administered to a a ~~[each]~~ student in a special education program  
20 under Subchapter A, Chapter 29, for whom an assessment instrument  
21 adopted under Subsection (a) or, to the extent applicable,  
22 Subsection (a-4), (a-5), or (a-6), even with allowable  
23 accommodations, would not provide an appropriate measure of student  
24 achievement, as determined by the student's admission, review, and  
25 dismissal committee.

26 (c-1) To the greatest extent practicable, the ~~[The]~~ agency  
27 shall develop any assessment instrument required under this section

1 in a manner that allows for the measurement of annual improvement in  
2 student achievement as required by Sections 39.034(c) and (d).

3 (c-3) In adopting a schedule for the administration of  
4 assessment instruments under this section, the State Board of  
5 Education shall require:

6 (1) assessment instruments administered under  
7 Subsections (a), (a-4), (a-5), and (a-6) [~~Subsection (a)~~] to be  
8 administered on a schedule so that the first assessment instrument  
9 is administered at least two weeks later than the date on which the  
10 first assessment instrument was administered under Subsection (a)  
11 during the 2006-2007 school year; and

12 (2) the spring administration of end-of-course  
13 assessment instruments under Subsection (c) to occur in each school  
14 district not earlier than the first full week in May, except that  
15 the spring administration of the end-of-course assessment  
16 instruments in English I, English II, and English III must be  
17 permitted to occur at an earlier date.

18 (e) Under rules adopted by the State Board of Education,  
19 every third year, the agency shall release the questions and answer  
20 keys to each assessment instrument administered under Subsection  
21 (a), (a-4), (a-5), (a-6), (b), (c), (d), or (l), excluding any  
22 assessment instrument administered to a student for the purpose of  
23 retaking the assessment instrument, after the last time the  
24 instrument is administered for that school year. To ensure a valid  
25 bank of questions for use each year, the agency is not required to  
26 release a question that is being field-tested and was not used to  
27 compute the student's score on the instrument. The agency shall

1 also release, under board rule, each question that is no longer  
2 being field-tested and that was not used to compute a student's  
3 score.

4 (1) The State Board of Education shall adopt rules for the  
5 administration of the assessment instruments adopted under  
6 Subsection (a) and, to the extent applicable, the assessment  
7 instruments adopted under Subsection (a-4) in Spanish to students  
8 in grades three, four, and [~~through~~] five who are of limited English  
9 proficiency, as defined by Section 29.052, whose primary language  
10 is Spanish, and who are not otherwise exempt from the  
11 administration of an assessment instrument under Section  
12 39.027(a)(1) or (2). Each student of limited English proficiency  
13 whose primary language is Spanish, other than a student to whom  
14 Subsection (b) applies, may be assessed using assessment  
15 instruments in Spanish under this subsection for up to three years  
16 or assessment instruments in English under Subsection (a) and, as  
17 applicable, Subsection (a-4). The language proficiency assessment  
18 committee established under Section 29.063 shall determine which  
19 students are administered assessment instruments in Spanish under  
20 this subsection.

21 (m) The commissioner by rule shall develop procedures under  
22 which the language proficiency assessment committee established  
23 under Section 29.063 shall determine which students are exempt from  
24 the administration of the assessment instruments under Section  
25 39.027(a)(1) or (2). The rules adopted under this subsection shall  
26 ensure that the language proficiency assessment committee provides  
27 that the exempted students are administered the assessment

1 instruments under Subsections (a) and (c) and, to the extent  
2 applicable, Subsections (a-4), (a-5), and (a-6) at the earliest  
3 practical date.

4 (n) This subsection applies only to a student who is  
5 determined to have dyslexia or a related disorder and who is an  
6 individual with a disability under 29 U.S.C. Section 705(20) and  
7 its subsequent amendments. The agency shall adopt or develop  
8 appropriate criterion-referenced assessment instruments designed  
9 to assess the ability of and to be administered to each student to  
10 whom this subsection applies for whom the assessment instruments  
11 adopted under Subsection (a) and, to the extent applicable, the  
12 assessment instruments adopted under Subsections (a-4), (a-5), and  
13 (a-6), even with allowable modifications, would not provide an  
14 appropriate measure of student achievement, as determined by the  
15 committee established by the board of trustees of the district to  
16 determine the placement of students with dyslexia or related  
17 disorders. The committee shall determine whether any allowable  
18 modification is necessary in administering to a student an  
19 assessment instrument required under this subsection. The  
20 assessment instruments required under this subsection shall be  
21 administered on the same schedule as the assessment instruments  
22 administered under Subsections (a), (a-4), (a-5), and (a-6), as  
23 applicable [~~Subsection (a)~~].

24 (p) On or before September 1 of each year, the commissioner  
25 shall make the following information available on the agency's  
26 Internet website for each assessment instrument administered under  
27 Subsection (a), (a-4), (a-5), (a-6), (c), or (l):

1           (1) the number of questions on the assessment  
2 instrument;

3           (2) the number of questions that must be answered  
4 correctly to achieve satisfactory performance as determined by the  
5 commissioner under Section 39.0241(a);

6           (3) the number of questions that must be answered  
7 correctly to achieve satisfactory performance under the college  
8 readiness performance standard as provided by Section 39.0241; and

9           (4) the corresponding scale scores.

10          SECTION 2. (a) This Act takes effect on any date not later  
11 than September 1, 2015, on which the commissioner of education:

12           (1) obtains any necessary waiver from the application  
13 of federal law or regulation conflicting with Section 39.023,  
14 Education Code, as amended by this Act, as required by Section  
15 39.023(a-9), Education Code, as added by this Act; or

16           (2) receives written notification from the United  
17 States Department of Education that a waiver is not required.

18          (b) This Act applies beginning with the first school year  
19 that begins after the date on which this Act takes effect under  
20 Subsection (a) of this section.

21          (c) If the commissioner of education obtains any necessary  
22 waiver or receives written notification as described by Subsection  
23 (a) of this section, the commissioner shall certify that the  
24 commissioner has obtained the waiver or received notification that  
25 a waiver is not required, as applicable, and shall publish notice of  
26 that fact in the Texas Register as soon as practicable after  
27 obtaining the waiver or receiving notification.